

## **Assembly Bill No. 67**

### **CHAPTER 562**

An act to amend Section 2827.10 of, and to add Section 747 to, the Public Utilities Code, relating to energy.

[Approved by Governor October 6, 2005. Filed with  
Secretary of State October 6, 2005.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 67, Levine. Energy: rates: report to the Legislature: fuel cell customer-generators.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

This bill would require the president of the commission to annually report to the appropriate policy committees of the Legislature on the costs of programs and activities conducted by an electrical corporation or gas corporation that have more than a specified number of customers in California, including activities conducted to comply with their duty to serve.

(2) Existing law, until January 1, 2006, requires every electrical corporation, as defined, to file with the Public Utilities Commission a standard tariff to provide for net energy metering, as defined, for eligible fuel cell customer-generators, as defined, until the total cumulative rated generating capacity used by the eligible fuel cell customer-generators equals 45 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand above 10,000 megawatts, or equals 22.5 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand of 10,000 megawatts or below. Existing law prohibits the combined statewide cumulative rated generating capacity used by the eligible fuel cell customer-generators in the service territories of all electrical corporations from exceeding 112.5 megawatts.

This bill would remove the January 1, 2006, repeal date, thereby making that tariff requirement operative indefinitely. Under the bill, a fuel cell electrical generating facility, as defined, would not be eligible for participation in the tariff unless it commenced operation before January 1, 2010, and a fuel cell customer-generator would be eligible for the tariff

only for the operating life of the eligible fuel cell electrical generating facility. Because a violation of these provisions is a crime under existing law, this bill, by changing the definition of a crime, would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 747 is added to the Public Utilities Code, to read:

747. (a) It is the intent of the Legislature that the commission reduce rates for electricity and natural gas to the lowest amount possible.

(b) The president of the commission shall annually appear before the appropriate policy committees of the Senate and Assembly to report on the costs of programs and activities conducted by each electrical corporation and gas corporation that is subject to this section, including activities conducted to comply with their duty to serve. The report shall identify, clearly and concisely, all of the following:

(1) Each program mandated by statute and its annual cost to ratepayers.

(2) Each program mandated by the commission and its annual cost to ratepayers.

(3) Energy purchase contract costs and bond-related costs incurred pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(4) All other aggregated categories of costs currently recovered in retail rates as determined by the commission.

(c) As used in this section, the reporting requirements apply to electrical corporations with at least 1,000,000 retail customers in California and gas corporations with at least 500,000 retail customers in California.

SEC. 2. Section 2827.10 of the Public Utilities Code, as added by Section 2 of Chapter 661 of the Statutes of 2003, is amended to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) "Electrical corporation" means an electrical corporation, as defined in Section 218.

(2) "Eligible fuel cell electrical generating facility" means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant's operation or its energy conversion.

(3) "Eligible fuel cell customer-generator" means a customer of an electrical corporation that meets all the following criteria:

(A) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator's own electrical requirements.

(B) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(C) Uses technology that meets the definition of an "ultra-clean and low-emission distributed generation" in subdivision (a) of Section 353.2.

(4) "Net energy metering" has the same meaning as that term is defined in Section 2827.9.

(b) Every electrical corporation shall, not later than March 1, 2004, file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity used by the eligible fuel cell customer-generators equals 45 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand above 10,000 megawatts, or equals 22.5 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand of 10,000 megawatts or below. The combined statewide cumulative rated generating capacity used by the eligible fuel cell customer-generators in the service territories of all electrical corporations in the state may not exceed 112.5 megawatts.

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical service area, preference shall be given to facilities which, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator's costs beyond those of

other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting the act adding this section, and may not form a part of net energy metering tariffs.

(e) The net metering calculation shall be carried out in accordance with Section 2827.9.

(f) A fuel cell electrical generating facility shall not be eligible for participation in the tariff established pursuant to this section unless it commenced operation before January 1, 2010. A fuel cell customer-generator shall be eligible for the tariff established pursuant to this section only for the operating life of the eligible fuel cell electrical generating facility.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.